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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA;
XIUHTEZCATL TONATIUH M., through his
Guardian Tamara Roske-Martinez; et al.,

Plaintiffs,

v.

The UNITED STATES OF AMERICA; et al.,

Defendants.

Case No.: 6:15-cv-01517-AA

**SUPPLEMENT TO PLAINTIFFS'
MOTION FOR LEAVE TO
AMEND AND FILE SECOND
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Pursuant to Fed. R. Civ. P. 15

Pursuant to Fed. R. Civ. P. 15, Plaintiffs hereby file the following supplemental documents regarding their Motion for Leave to Amend and File the Second Amended Complaint:

1. Attachment 1: A revised proposed Second Amended Complaint, deleting references to plaintiff Earth Guardians (who is not joining the Motion for Leave to Amend), in the caption and paragraph 91, and substituting new officials in the Biden-Harris administration for named Defendants both in the caption and in Paragraphs 102-104, 113, 128, and 130;
2. Attachment 2: The updated tracked version of the revised proposed Second Amended Complaint; and
3. Attachment 3: The updated list summarizing the amendments in the proposed Second Amended Complaint.

None of the changes listed above alters the Motion for Leave to Amend or the prior briefing and argument on the Motion.

After conducting research and conferring with Defendants, by this filing Plaintiffs do not seek to add nominal damages to their request for relief in their Second Amended Complaint. This Court raised the question of nominal damages in oral argument on the pending Motion for Leave to Amend, noting recent Supreme Court authority treating an action for nominal damages as a live dispute that satisfies the requirements of justiciability. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021). Defendants have made clear that they would assert a sovereign immunity defense to a claim for nominal damages and do not believe Congress has waived sovereign immunity for nominal damages in this type of Fifth Amendment case. Thus, Plaintiffs' concern is that, even if Plaintiffs' amended complaint successfully overcame the immunity defense at the motion to dismiss stage, Defendants would immediately appeal denial of the motion to dismiss. Denial of an immunity defense is the sort of collateral order that qualifies for immediate appellate review. *See*

Behrens v. Pelletier, 516 U.S. 299, 306 (1996); *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); *Hernandez v. City of San Jose*, 897 F.3d 1125, 1132 (9th Cir. 2018). In order to avoid the delay and distraction of an appeal, and with the hope that they will be allowed to amend and proceed promptly to trial on their request for declaratory relief for their past, ongoing, and imminent future injuries, Plaintiffs have elected not to include nominal damages expressly in their Prayer for Relief at this time.

DATED this 16th day of July, 2021.

Respectfully submitted,

/s/ Julia A. Olson
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